

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 76-1200

B
P/5

(To be argued by Mr. Andrew A. Bucci)

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,
APPELLEE,

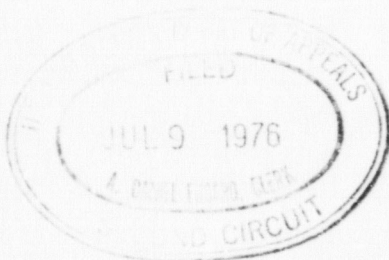
v.

ANDREW A. BUCCI,
DEFENDANT, APPELLANT.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX

ANDREW A. BUCCI
9 Steeple Street
Providence, Rhode Island 02903
Pro Se



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

| | Page |
|------------------------------------|------|
| Docket Entries | 1 |
| Indictment | 12 |
| Ruling on Post-Trial Motions | 20 |

~~ION-9. KUTMAN~~

H 75 / 55

[illegible]

| DATE | PROCEEDINGS |
|--------------|---|
| 1975 3/21 | The Grand Jury at Hartford returned a True Bill of Indictment charging violation of 18 USC 241 in ct. 1 - conspire to injure, oppress threaten and intimidate a citizen of the USA in the free exercise and enjoyment of a right and privilege secured to him having exercised said right and privilege and it is further alleged that this combination and conspiracy resulted in the death of Daniel LaPolla; 18 USC 1623 and 2 in cts. 2, 3 & 4 - did wilfully suborn, command, instigate, counsel, induce, procure, aid and abet his client to take an oath and make false declarations before the Court; and 18 USC 371 in ct. 5 - conspiracy. Bench Warrant to issue with bond as set in Criminal No. H-75-40. (Clarie, J.) |
| 3/21 | Bench Warrant issued in duplicate and with certified copy of the Indictment handed US Marsahl for service. |
| 3/25 | PLEA of not guilty to all 5 counts. Two weeks for Motions - Govt. to respond in one week. Atty. Goffey requests that Court give Mr. Buccì two weeks to decide whether he will represent himself. Atty Buccì to appear on April 8th at 10:00 am to check US Atty's. file. Motions to be filed on April 14th. Govt. to respond by Apr. 21st. Atty. Buccì request personal surety bond. Govt. agrees to Atty. Buccì's |
| | Continued |

USA vs Andrew A. Bucci

Criminal H-75-39

| DATE 1975 | PROCEEDINGS |
|--------------|---|
| 3/25/ | contd...request to put up his house. All papers to be filed with US Marshal by April 2nd. (Clarie, J.) |
| 3/31 | Executed Marshal's Return filed. (Warrant for Arrest of Deft.) |
| 4/8 | Bond in the amount of \$25,000.00 with property surety, filed. |
| 4/11 | Affidavit of Peter R. Casey, III, Special Attorney, filed. (Clarie, J.) |
| 4/11 | Notice of Readiness / Filed by Govt / See Crim. H-75-40 |
| 4/14 | Motion To Withhold Filing of Special Motions, Motion To Dismiss For Lack of Venue along with Memorandum in Support of Motion To Dismiss, Motion For Change of Venue along with Memorandum in Support of Motion For Change of Venue, filed. |
| 4/21 | Bill of Particulars, filed by Atty. Bucci. |
| 4/24 | Motion To Dismiss, filed. |
| 4/24 | Government Response to Defendant's Motion To Dismiss the Indictment, filed. |
| 4/25 | Motion To Consolidate Indictments, filed by Govt. |
| 4/28 | Motion To Disqualify Paul E. Coffey as Prosecutor, Motion To Sever Defendant From David Guillette, Motion To Sever, Motion To Sever Count I from Counts II, III & IV, Supplemental Memorandum in Support of the Defendant's Motion For Change of Venue and Motion To Dismiss for Lack of Venue and Motion To Disqualify Honorable Thomas Murphy and Honorable T. Emmet Clarie, filed. |
| 5/1 | Response of United States To Motion To Dismiss Count One, filed. |
| 5/2 | Motion To Dismiss For Lack of Jurisdiction received unsigned by Mr. Bucci. |
| 5/2 | Memorandum in Support of Change of Venue in H-75-39 and Defendant's Response to Government's Response To Motion For Change of Venue and Motion To Dismiss for Lack of Venue and Jurisdiction, filed. |
| 5/5 | Response of United States To Defendant's Motions To Sever and Response of United States To Defendant's Motion For A Bill of Particulars, filed. |
| 5/5 | Defendant's Objection To Government's Motion To Consolidate For Trial, filed. |
| 5/5 | Hearing on Motions - Motion To Dismiss For Lack of Jurisdiction, filed by Defendant. Judge Clarie advises Counsel that Cr. H-75-39 and H-524 will be reassigned to another Judge - other than Judge Murphy and trial will not go forward on May 13th at Waterbury. Trial will most likely be held at New Haven. Motion for Change of Venue to Providence is denied from Bench in H-75-39 and H-75-40. Atty. Coffey requests Court to order Mr. Bucci to advise Clerk's Office shortly whether he will obtain counsel - Atty. Bucci says he will not request delay whether he will act for himself or obtain counsel - Motion To Dismiss for Lack of Jurisdiction is denied - Decision reserved on all other motions. (Clarie, J.) (Date to be set for hearing on Motions in Cr. H-524) (Clarie, J.) |
| 5/19 | 1. Endorsement entered and filed on Deft. Bucci's Motion To Disqualify Honorable Thomas Murphy and Honorable T. Emmet Clarie, "The defendant's Motion To Disqualify Honorable Thomas Murphy and Honorable T. Emmet Clarie has become moot in respect to Criminal No. H-75-39 since that case has been assigned to Judge John O. Newman. Decision reserved as to Criminal No. H-75-40. So ordered." (Clarie, J.) m-5/19/75 |
| " | 2. Endorsement entered and filed on Motion To Withhold Filing of Special Motions, "The defendant's Motion To Withhold Filing of Special Motions is denied. So ordered." (Clarie, J.) m-5/19/75 |
| " | 3. Endorsement entered and filed on Motion For Change of Venue, "The defendant's Motion for Change of Venue is denied; So Ordered." (Clarie, J.) m-5/19/75 |

CONTINUED ON PAGE 2

| DATE | PROCEEDINGS |
|------|--|
| 1975 | |
| 5/19 | 4. Endorsement entered and filed on Bill of Particulars, "The defendant's Motion For Bill of Particulars is denied. The information sought is evidentiary in nature and not an appropriate subject of a Bill of Particulars. So ordered." (Clarie, J.) m-5/19/75 |
| " | 5. Endorsement entered and filed on Motion To Dismiss For Lack Of Venue, "The defendant's Motion To Dismiss for Lack of Venue is denied; so ordered." (Clarie, J.) m-5/19/75 |
| " | 6. Endorsement entered and filed on Motion To Sever Count I From Counts II, III & IV, "The defendant's Motion to Sever Count I From Counts II, III and IV is granted; so ordered." (Clarie, J.) m-5/19/75 |
| " | 7. Endorsement entered and filed on Motion To Disqualify Paul F. Coffey As Prosecutor, "The defendant's Motion To Disqualify Paul E. Coffey as Prosecutor is denied. So ordered." (Clarie, J.) m-5/19/75 |
| " | 8. Endorsement entered and filed on Motion To Dismiss, "The defendant's Motion To Dismiss for the reasons set forth therein, is denied. So ordered." (Clarie, J.) m-5/19/75 |
| " | 9. Endorsement entered and filed on Motion To Dismiss For Lack of Jurisdiction, "The defendant's Motion To Dismiss for Lack of Jurisdiction is denied. So ordered." (Clarie, J.) m-5/19/75 |
| " | 10. Endorsement entered and filed on Motion to Sever, "The defendant Motion To Sever indictment H-524 from H-75-39 (Count I) is reserved for decision by the assigned trial Judge, Honorable Jon O. Newman; so ordered." (Clarie, J.) m-5/19/75 |
| " | 11. Endorsement entered and filed on Motion To Sever Defendant From David Guillette, "The defendant's Motion to Sever Defendant from David Guillette is reserved for decision by the assigned Trial Judge, Honorable Jon O. Newman; so ordered." (Clarie, J.) m-5/19/75 |
| | Copies of the above endorsements handed to Attys. Bucci and Santos in New Haven on 5/20/75 and copies handed Atty. Coffey in Hartford on 5/19/75. |
| 5/20 | File hand delivered on 5/19/75 to Hon. Jon O. Newman by Richard Maynard, Deputy Marshal. Original docket mailed to Clerk's Office, New Haven, Conn. this date. |
| 5/20 | Hearing held on all pending motions. Hearing continued to May 21, 1975 at 10:00 A.M. Newman, J. m-5/21/75. |
| 5/21 | Court Reporter's Notes of Proceedings (Motions) held on May 20 and 21, 1975, filed. (Gale, R.) |
| 5/21 | Waiver of Physician-Client Privilege, filed by defendant MARRAPESE. Three certified copies mailed to Atty. Wade at his request. |
| 5/21 | Continued Hearing on All Pending Motions. Following motions filed by defendant ZINNI: (1) Motion to Dismiss Count 1; (2) Motion to Suppress; (3) Motion For Change of Venue; (4) Motion re Anthony Souca, Informant; (5) Motion for Discovery and Inspection Concerning Power of Special Prosecutor; (6) Motion to Disqualify; (7) Motion to Dismiss. Oral Motion of Defendant Zinni for a Continuance to Sept. Oral Motion of Defendant Joost to Act as Co-Counsel. Oral Motion of Defendants' Joost and Guillette for Reduction of Bond. Decision Reserved on all motions. Newman, J. m-5/22/75. |
| 5/28 | Response by United States to Motion for Disclosure of Information Concerning Daniel La Polla, filed. |
| 5/29 | Ruling on Motions for Consolidation, Severance and Continuance, filed and entered. The motion of defendants Guillette and Zinni for a continuance is granted, and sixty days are allowed. The motion of the Government to consolidate for trial Criminal No. H-524 and H-75-39 is granted, and the motions of all defendants for separate trial are denied. Trial will commence July 28, 1975. Newman, J. m-5/30/75. copies mailed to counsel. |

| DATE | PROCEEDINGS |
|------|--|
| 6/4 | Motion of the United States for Return of Exhibits, filed and endorsed as follows: "All exhibits introduced at any proceedings in these cases may be returned to the party that introduced them into evidence. This order is stayed until June 9, 1975, to permit the Government an opportunity to serve upon defendants a list of those exhibits introduced by defendants, which the government claims are property of the government. If defendants do not object, such listed exhibits may also be returned to the government. Newman, J. m-6/5/75. copies mailed to counsel of record. |
| 6/16 | Notice of Readiness, filed by Government. |
| 6/19 | Response of United States to Request for Disclosure of Electronic Surveillance and Affidavit of Paul E. Coffey, Esq., filed by Government. |
| 6/23 | Copy of Letter from Special Atty. Coffey to Atty. Bucci, re: Credit checks made by Govt., filed. |
| 6/24 | Response of the United States to Motion for Statements or Promises Rewards or Inducements, filed by Govt. |
| 6/25 | Disclosure of Records and Testimony of Jacob Kaplan, filed by Government. |
| 7/2 | Ruling on Pre-Trial Motions, filed and entered. Newman, J. M-7/3/75. copies mailed to counsel |
| 7/7 | Response of the United States to Defendant's Request for Selection of Jurors from the New Haven and Bridgeport and for Sequestration Order, filed. |
| 7/7 | Response of the United States to Deft's Motion for Disclosure of Intercepted Wiretap Conversations, filed. |
| 7/1 | Additional Response of the United States to Motion for Disclosure of Electronic Surveillance, filed by Govt. |
| 7/14 | Marshal's return showing service, filed: (1) Subpoena to Produce Document or Object. |
| 7/15 | Bill of Particulars, filed by Government |
| 7/15 | Response of the United States To Motion for Brady Material, filed by Government. |
| 7/15 | Disclosure by the United States of Report of Connecticut State Trooper Raymond Veillett, filed by Govt. (with attachment) |
| 7/15 | Compliance of the United States to Court Ordered Discovery and Inspection, with sealed attachment, filed by Court. (in H-524) |
| 7/15 | Disclosure of Recorded Statements of Defendants, filed by Govt. with attachment. |
| 7/18 | Letter from Spec. Atty. Coffey to Judge Newman, with attachments (re: statement and reports of Interview of Wm. Marapese), filed. |
| 7/21 | Hearing on Motion For Disclosure of Intercepted Wire Tap Conversations. - Court received oral approval of Rhode Island authorities to make copies of recordings available to all defense counsel - Receipt of Newman, J., filed re 28 reels of tapes received from Lt. Corriera - Govt. Witness sworn and testified - Govt. exhibits 1 & 2 marked for identification - Motion For Further Discovery (previously filed) not objected to by Govt., Partial compliance by Govt. by 7/23/75 - Motion of Defts for Severance (previously filed), Denied - Motion of Defts Joost and Guillette for Further Discovery, filed - Govt. to inquire re requested information - Motion to Exhume Body of D. LaPolla, filed. Decision reserved - Motion of Deft. Zinni (oral) For Severance, Denied. (Newman, J.) |
| 7/22 | Response of United States to Motion To Inspect Filed of State and Local Law Enforcement Agencies with Respect to the Murder of Daniel LaPolla, filed along with Affidavit of Atty. Paul E. Coffey. |

Continued on Page 3

| DATE | PROCEEDINGS |
|------|---|
| 1975 | |
| 7/23 | Ruling On Motion for Exhumation, filed. (Newman, J.) m-7/23/75 "The motion for exhumation of the body of Daniel LaPolla for purposes of obtaining the victim's fingerprints is granted. SO ORDERED." Copies sent to counsel of record. |
| 7/23 | Ruling on Disclosure of Brady Material, filed. (Newman, J.) m-7/23/75 "The Court has reviewed the material and concluded that item no. 20 concerning Claude Claudio and paragraph 3 of item no. 45 concerning John Quimette are sufficiently, though marginally, in the area of disclosure required by Brady v. Maryland, 373 U.S. 83 (1963). The Government is directed to make these items available to the defendants. Copies sent to counsel of record. |
| 7/24 | Response of United States To Motion For Further Discovery Concerning Daniel LaPolla and Compliance of United States to Court Ordered Brady Material, Filed. |
| 7/22 | Court Reporter's notes of proceedings held on July 21, 1975, filed in New Haven. (Gale, R.) |
| 7/25 | ORDER, filed. (Newman, J.) m-7/25/75 "....the United States is directed to bear the expense of the exhumation." Copies handed Attys. Wade and Santos and copies mailed to Atty. Bucci and handed to Atty. Coffey. |
| 7/25 | Motion for Return of Exhibits, filed. (Not acted upon) |
| 7/28 | Motion For Return of Exhibits, filed. |
| 7/28 | <u>JURY TRIAL</u> - Defendants Request for Voir Dire Exam of Jurors, filed - Defendants Request for Jury Questions, filed - Defendant Zinni's Motion For Restriction of News Media, filed. Defendant Zinni's Motion To Compel Government Witnesses who composed reports to bring with them all notes, etc. Motion of Deft. Zinni re Order of Proof - Govt. Motion re Return of Exhibits - Granted. Panel of 112 veniremen report and sworn on Voir Dire - Court gives individual Voir Dire and excuses some for cause - Court questions panel as a whole on Voir Dire - Court adjourned at 5:45pm until tomorrow at 10:00am. (Newman, J.) |
| 7/29 | Response of United States to Motion For Further Discovery Regarding William Marrapese, filed. |
| 7/29 | <u>JURY TRIAL CONTINUES</u> : Panel of 61 veniremen report - Jury of 12 and 4 alternates drawn, impanelled and sworn. - Oral Motion of Defendants to sequester witnesses, Granted - Case agents Wronizk and Petrella may sit at counsel table of Govt. - Oral Motion of Defendants re introducing M-16 Gun Evidence, Denied - Oral Motion of Defendant Bucci to Sever, Denied - Oral Motions of Defendants for daily copy of William Marrapese's testimony, approved, subject to availability of reporters. Opening Statement of Govt. - Opening Statement of Deft. Guillette - Opening statement of Deft. Joost - 2 Govt. Witnesses sworn and testified - Govt. exhibits 1, 2, 3, 6, 7, 8 & 12, filed. - Govt exhibits 4, 5, 9, 10 & 11 marked for identification - Excerpted portion of Exh. 5 made full exhibit. Court approves Exh. #1 for Identification (29 M-16's to be in custody of Govt. with consent of counsel (Newman, J.) |
| 7/30 | <u>JURY TRIAL CONTINUES</u> : Panel of 16 jurors report. - Defendant Guillette's Motion To Sever, Denied - Govt. Witness, previously sworn resumes stand and continues to testify - Govt. Exhibit #13, filed - Govt. exhibit #9 made full exhibit - Defendant's exhibits A & B, filed. Oral motions of Defendants for Severance and/or For a Mistrial, Denied. Oral motions of Defts. Joost & Guillette for severance or Mistrial renewed, Denied. Court adjourned at 5:15pm. (Newman, J.) |
| | Continued |

| DATE 1975 | PROCEEDINGS |
|--------------|--|
| 7/31 | JURY TRIAL CONTINUES: 16 Jurors report - Govt. provides material to Court for review before turning over copies to Defendants - All material given to Defense except one memorandum which Court ordered sealed and identified as Item #5 in series of Scaled Documents for review by Circuit Court should it become necessary - Court retained document. - Witness previously sworn, resumed stand and testified - Defendants Exhibits C thru J marked for identification - Defendant's exhibits C & F made full exhibits - 7 Govt. Witnesses, sworn and testified - Govt. exhibits 14 thru 29 marked for identification - Govt. exh. 18, 19, 20, 21, 23, 24, 25 and 26 made full exhibits - Court adjourned at 5:00 p.m. (Newman, J.) |
| 8/1 | JURY TRIAL CONTINUES: 16 Jurors report. Court inquired re note to Court from a juror - Counsel advised Court that neither Defts. nor Govt. had any objections to juror's continuing on panel - Witness previously sworn, recalled and testified - Two Govt. witnesses, sworn and testified - Govt. exh. 30 thru 38 marked for identification - Govt. exhibits 31, 32, 35, 36, 37 & 38 made full exhibits. Defts. Bucci and Zinni orally moved to sever. Denied. Defts. Bucci and Zinni orally move for severance. Denied. Court adjourned at 5:30pm. (Newman, J.) |
| 8/2 | JURY TRIAL CONTINUES: 16 Jurors report - Govt. Witness previously sworn resumed stand and testified - 2 Govt. witnesses, sworn and testified - Govt. exhibits 39 & 41, filed - Govt. exhibits 17 & 27 made full exhibits - Govt. exhibit 40 marked for identification - Defendants' exhibits K thru Q, filed. Court adjourned at 5:25pm. (Newman, J.) |
| 8/5 | ORDER, filed. (Newman, J.) m-8/5/75 (Instr. to U. S. Marshals Service). Attested copy handed US Marshal at Hartford. |
| 8/5 | JURY TRIAL CONTINUES: - 16 Jurors report - Govt. Witness previously sworn, resumed stand and testified - Deft. exhibit R, filed - Court granted Govt's offer of proof, and Denied Defts.' Motion to Sever - Govt. witness sworn and testified - Govt. exhibit #1 made full exhibit - Paul Orth appears as counsel for Witness Marrapese - Govt. exhibits 42 and 43, filed. Court adjourned at 5:10pm. (Newman, J.) |
| 8/5 | Disclosure by United States of Money Provided To William Marrapese and/or Money Expended on His Behalf To Family or Relatives, filed. |
| 8/6 | JURY TRIAL CONTINUES: 16 Jurors report - William Marrapese, previously sworn continued testimony - Atty. Stanford Shmukler appeared for Witness Marrapese - Oral Motions of Joost, Zinni & Bucci for Mistrial, Denied - Defts. Joost & Guillette Requested Jury Instructions re Previous Conviction, filed. Court rejected Offer of Proof by Defts. re allegations concerning Bucci's contacting Housand; Housand's testimony in prior cases and Housand's recantation of testimony. Court adjourned at 5:30pm. (Newman, J.) |
| 8/7 | JURY TRIAL CONTINUES: 16 Jurors report - William Marrapese, Govt. Witness, previously sworn resumed stand and testified - Oral Motion of Def. Guillette for Severance, Denied. Deft's exhibit S, filed. Court adjourned at 5:30pm. (Newman, J.) |
| 8/8 | Waiver of Physician-Client Privilege, filed by W. Marrapese. |
| 8/8 | JURY TRIAL CONTINUES: 16 Jurors report - William Marrapese, previously sworn, continued to testify - Defts. exhibit T. marked for identification - Oral Motion Of All Defendants that Govt. agents including US Attorney, not confer with Mr. Marrapese further until he is no longer a witness, Granted subject to the Court's prior approval of specific subject areas upon request of the Govt. Court adjourned at 3:45pm. (Newman, J.) |

Continued on Page 4

| DATE | PROCEEDINGS |
|------|---|
| 1975 | |
| 8/11 | JURY TRIAL CONTINUES:- 16 Jurors report - William Marrapese previously sworn, continues to testify - Deft's exhibits U, filed - Govt. Witness sworn and testified - Court exhibits 3, filed. Court adjourned at 5:30pm.(Newman,J.) |
| 8/12 | JURY TRIAL CONTINUES: Def. Zinni orally moves for mistrial on basis of surprise, Denied - 16 Jurors report - 4 Govt. witnesses sworn and testified - Govt. exhibits 44, 45, 46 & 46, filed - Govt. exhibit 48 marked for identification later made full exhibit - Defts. Joost and Guillette move to strike testimony of McDonald, Denied - Deft. Joost moves for a mistrial, Denied by Court - Deft. Zinni moves to sever, Denied by Court. Court adjourned at 5:30pm.(Newman,J.) |
| 8/13 | JURY TRIAL CONTINUES: Def. Guillette orally moves to strike testimony of Varcos, Denied - Request of Def. Guillette made for precautionary instruction by Court to Jury upon completion of Varcos testimony - 16 Jurors report - Witness previously sworn resumed stand and testified - Deft's. exhibits V thru Z, filed - 2 Govt. witnesses sworn and testified - Govt. exhibit 50, filed - Court exhibits 4 & 5, filed - Govt. rests at 5:25pm. Jury excused until 11:00am 8/14/75. (Newman,J.) |
| 8/14 | JURY TRIAL CONTINUES: All Defts. move orally for Judgments of Acquittal, Denied - 16 Jurors report - 3 Deft. Witnesses sworn and testified - Motion of Atty. Wade that testimony of Gerald Woodall directed to means of compromising alarm systems be SEALED, Motion Granted - Deft's. exhibits AA thru KK, filed. Court exhibit #6, filed. Govt. exhibits 51 & 52, filed. Court adjourned at 5:40pm.(Newman,J.) |
| 8/15 | JURY TRIAL CONTINUES: Transcript of Excerpt of Testimony of Mr. McDonald, filed. Def. Zinni orally moved to sever - Denied. 16 Jurors report - Gerald Woodall, previously sworn, continues to testify - 3 Deft. Witnesses sworn and testified. *Court adjourned at 5:45 pm. (Newman, J.) * Govt. exhibits 53 thru 56 filed - Govt. exhibit 57 marked for iden. - Govt exhibit 58 filed - Defs' exhibit LL, filed. |
| 8/18 | JURY TRIAL CONTINUES: Court denied use o. Souca transcript. - Defs' exhibit MM, marked for iden. - Defs' Zinni & Joost orally move to sever, Denied - Defs' Zinni & Joost orally move for mistrial, Denied - Affidavit of P. Casey filed with Court directed to reports by H. C. Luther of 10/16/72 & 9/22/72. Sealed item No. 7 - H. C. Luther report of 9/22/72 - Sealed item No. 8 H. C. Luther report of 10/16/72, excepting portions order to be given Defs'. - Defs' move for in camera examination of informant referred to in Casey affidavit, Decision Reserved. - 16 jurors report - C. Thomas Zinni, previously sworn, resumes testimony - 4 Deft. Witnesses sworn and testified. - Defs' exhibits NN, & OO, filed. - Court adjourned at 5:40 PM. (Newman, J.) |
| 8/19 | JURY TRIAL CONTINUES: 16 jurors report - Def's Exh. PP marked for Ident. Def's Exh QQ filed. J. Housand sworn and testified, Atty. Max Heiman appeared for Housand, Def. Joost, Guillette & Zinni motion for Immunity order re Housand denied. Def. Joost, Guillette & Zinnis Motion for Severance, Mistrial and Dismissal are denied. A. Varcos, Previously sworn, continued to testify. P. Guillette Def's witness sworn and testified Govt. Exh 59 marked for Ident. D. Guillette sworn and testified. Def. Exh. RR and SS filed, Court adjourned at 4:35 p.m. (Newman, J) |
| 8/20 | JURY TRIAL CONTINUES: 16 jurors report, Def. Guillette previously sworn continues testimony. H. Fitzsimmons sworn and testified |

| DATE 1975 | PROCEEDINGS |
|--------------|--|
| | for Def. Def's Exh. TT, UU, VV and WW filed, J. Wade, sworn and testified for Def. Def. Exh XX filed, R. Joost sworn and testified, Court Exh. 7, filed. Court adjourned at 5:05 p.m. (Newman, J.) |
| 8/21 | JURY TRIAL CONTINUES: 16 Jurors report - Def. Exh YY marked for Ident. Govt Exh 60 marked for Ident. R. Joost, previously sworn continues testimony, Govt Exh 61 filed. Motion of Def. Zinni for mistrial Denied. S. Petrella previously sworn resumes stand and testified, Court adjourned at 4:45 p.m. (Newman, J.) |
| 8/22 | JURY TRIAL CONTINUES: 16 Jurors report . Trial continues - jurors not present. Govt request to charge filed. Motion of Joost and Guillette for Judgement of Acquittal - Denied. Motion of Joost to dismiss Counts 2 & 3 Denied. Motion of Zinni to expunge evident - Denied. Motion of Bucci and Zinni for Acquittal re Rule 29(b) Dec. Res. Issue to go to Jury. Requests to charge filed by Defs. Joost and Guillette. Court adjourned at 1:20 p.m. (Newman, J.) |
| 8/25 | JURY TRIAL CONTINUES: 16 Jurors report. All Four Defendants rest. Govt. Summation 10:09 a.m. to 11:07 a.m. Def. Joost Summation 11:16 to 12:18 p.m. Def. Guillette summation 12:30 p.m. to 1:29 p.m. Def. Zinni Summation 2:20 p.m. to 3:15 p.m. Def. Bucci Summation 3:25 p.m. to 4:10 p.m. Govt rebuttal 4:25 p.m. to 5:04 p.m. Def. Joost, Guillette and Zinni move for mistrial. Denied. Court adjourned at 5:30 p.m. (Newman, J.) |
| 8/26 | JURY TRIAL CONTINUES: Counsel approve of Verdict Form - 16 jurors report. Def. exg. 22 filed. Jury Charge 10:10 a.m. to 11:35 a.m. No exceptions to Charge by Govt. Def. Joost, Guillette and Zinni took exceptions to charge. Def. Bucci took no exceptions to charge. Exhibits, Indictments H-524 and H-75-39 given to the jury at 11:50 a.m. and jury commenced its deliberations. Alternates excused by Court. Court exhibits 8 thru 14, filed. Court Adjourned at 5:25 p.m. (Newman, J.) |
| 8/27 | JURY TRIAL CONTINUES: 12 Jurors report and continue their deliberations. Court exhibits 15 thru 18 filed. Order of Court re: Transportation for Jurors to be Provided by Marshal, filed. (Newman, J.) 8/28. 9:30 p.m. Jury called into Court and excused until 9:30 a.m. 8/28/75. Court Adjourned at 9:35 p.m. (Newman, J.) |
| 8/20 | Court Reporter's Notes of Proceedings held on March 25 and May 5, 1975, filed in Hartford. (Sperber, R.) |
| 8/28 | JURY TRIAL CONTINUES: 12 Jurors report at 9:40 am and continue their deliberations - At 10:45am, jury called into courtroom and portions of Marrapese testimony read by reporter re Def. Zinni per inquiry of Court exh 18 - At 3:50pm Court Exh 20 note from jury re three questions concerning testimony - At 4:30pm Court exh, 21 note from juror re other than May 8th meeting - At 5:15pm Jury called into courtroom and testimony read re Court Exh 20 and Court's answer to Court exh, 21 - At 5:30pm Jury note re phone calls Court exh, 22 - At 6:25pm Jury note re adjourning, Court exh 23. Jury excused at 6:30pm until 9:30am on Aug. 29th. Court adjourned at 6:35pm. (Newman, J.) |
| 8/29 | Jury Trial Continues - 12 Jurors report at 9:55am and continue deliberations - Court exh. 24. Note from Juror Mazzawy re Dr. Sullivan's testimony - after which jury returned to its deliberations - At 4:50pm note from Jury requesting to adjourn and return on Tues. Sept. 2. Now court exh. 25 - Jury called into Court at 5:35pm. Court exh 26. Note from Jury re returning 9/2/75 - Jury excused at 6:05pm until 9:30am Tuesday, Sept. 2, 1975. Defs. Joost and Guillette move for Mistrial, Motion Denied. Def. Joost moves for reduction of Bond or for furlough, Denied. Court adjourned at 6:15pm. (Newman, J.) |

CONTINUED ON PAGE 5

| DATE | PROCEEDINGS |
|-------|---|
| 1975 | |
| 9/2 | JURY TRIAL CONTINUES: 12 Jurors report - Jury called into Courtroom and questioned by Court re non-discussion of case over weekend no response by jury and Court had jury return to jury room to continue its deliberations - Note from Jury at 4:50pm by Foreman Mazzawy - Jury called into Courtroom at 5:08pm Court exh 27, Note from Mr. Mazzawy - At 6:40pm, note from Jury re adjourning now Court exh 28. Jury called into Courtroom and excused at 6:45pm. Court adjourned at 6:45pm. (Newman, J.) |
| 9/3 | JURY TRIAL CONTINUES: 12 Jurors report and continue to deliberate - Jury called into Courtroom at 9:45am and advised that no books etc as requested by one juror would be allowed in Jury Room - any questions re meaning of words, etc should be directed to Court - At 9:52am Jury continues its deliberations - At 11:25am note from Jury requesting Bucci cross of Marrapese be read - Jury called into Courtroom at 11:35am and reporter read requested material - Court exh 29, note from Jury re reading of Bucci's cross examination of Marrapese - At 1:50am, note from Jury re "Decision", Court exh. 30, Note from Jury re "Decision" - Jury called into Courtroom at 2:25pm - Jury hands "Verdict Form" to Court at 2:30pm by its foreman, Robert Mazzawy - VERDICT Deft. Guillette, counts 1, 2 & 3 no verdict Deft. Joost, count 1, no verdict, counts 2 & 3, Not Guilty Deft. Zinni, Count 1, no verdict, counts 2 & 3, Not Guilty Deft. Bucci, count 1, Not Guilty Jury not polled - Verdict verified and ordered recorded - Court declares a Mistrial as to Counts having finding of No Verdict without prejudice to Def's rights to file motions. Court grants 20 days for motions by Defendants. Defs. Joost's and Guillette's Motion for Reduction of Bond, Denied. Court ordered return of Govt. exhibits 1 and 37 to Govt. for custody thereof, and Def. exhibit K to Defs. Joost and Guillette attorney for custody thereof. Court filed Sealed Documents 1 thru 9. Court adjourned at 5:05pm. (Newman, J.) |
| 10/9 | CJA 21, executed (Newman, J.) and mailed to A.O. for payment. |
| 11/6 | Court Reporter's Transcripts (8 vols) of proceedings held on August 5, 6, 7, 8, 11, 14, 19 & 20, 1975, filed in New Haven. (Sanders, et al., R.) |
| 11/6 | 2 CJA 21, executed (Newman, J.) and Mailed to A.O. for payment |
| 12/15 | Court Reporters' Notes of Proceedings (Trial) held in Hartford on July 28, 29, 30, 31, Aug. 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, Sept. 2 and 3, 1975, filed. (Merchant and Cohen, Rs') |
| 1976 | |
| 1/20 | Jury Assg. List. Cal. - Ready, 2nd case. (Blumenfeld, J.) |
| 1/27 | JURY TRIAL: Deft. orally move to put trial over until after Cr. H-75-40 now about to go forward before Judge Glaric, DENIED - Panel of 72 jurors answer roll call and sworn on Voir Dire - 12 Jurors and 2 Alternates impanelled and sworn - Balance of Jury Panel excused - 3 Govt. witnesses sworn and testified - Def's oral motion to excuse or dismiss Jury - Denied - Court ordered restriction on newspaper reporting of case - Govt. exh. 1 thru 6 marked for identification - Govt. exh. #6 made full exhibit - Govt. exh #4 made full exhibit. (Blumenfeld, J.) (Court adjourned at 5:00pm) |
| 1/28 | JURY TRIAL CONTINUES: 14 Jurors report - Govt. Witness resumes stand and testifies - Govt. exh #7 marked for identification - Deft. Exh. A, marked for identification - Court adjourned at 3:30pm (Blumenfeld, J.) |

CONTINUED

| DATE 1976 | PROCEEDINGS |
|--------------|--|
| 1/29 | JURY TRIAL CONTINUES: 14 Jurors report - Govt. rests at 10:08am - Case continued until January 30, 1976 at 10:00am. Jury cautioned by Court and excused till 1/30/76 at 10:00am. (Blumenfeld, J.) |
| 1/30 | JURY TRIAL CONTINUES: 14 Jurors report - Deft. rests at 10:20am - No Rebuttal by Govt. - Summations from 10:25am to 11:30am - Rebuttal by Govt from 11:31am to 11:45am - Charge by Court from 12:04pm to 1:03pm - Jury retires at 1:05pm - Exhibits and Indictment taken to Jury at 1:15pm - Motion of Deft. for Judgment of Acquittal, Dec. Res. - Jury excused (and cautioned) by Court for lunch and told to return at 2:00 pm - Jury called into Courtroom at 5:00pm - Jury elects to deliberate longer and returns to Jury Room at 5:04pm - Jury returns at 5:20pm with a VERDICT of GUILTY on counts 2, 3, 4 & 5. Verdict verified and ordered recorded - No request to poll jury - Case continued for presentence report - Parties to submit Briefs re Deft's Motion For Judgment of Acquittal. Court adjourned at 5:25pm. (Blumenfeld, J.) |
| 2/5 | Motion For Acquittal Notwithstanding Verdict of Guilty and Motion For a New Trial, filed. |
| 2/6 | Memorandum In Support of Motion For Acquittal Notwithstanding Verdict of Guilty and Memorandum in Support of Motion For A New Trial. filed. |
| 2/10 | Court Reporter's transcript of proceedings held on January 27, 1976, filed in Hartford. (Collard, R.) (Direct Exam. of Wm. L. Marapese) |
| 2/23 | Response of the United States To Motions For Judgment of Acquittal and New Trial, filed. |
| 2/11 | Received Supplemental Memorandum in Support of Motion For Acquittal Notwithstanding Verdict of Guilty (executed 3/4/76). |
| 3/26 | RULING ON POST-TRIAL MOTIONS, filed. (Blumenfeld, J.) m-3/26/76 "Accordingly, a judgment of acquittal may enter on counts two, three, and four; the defendant's motion for a new trial as to count five is denied. It is SO ORDERED." Copies disbursed to Attys. Colley and Bucci. |
| 4/1 | Defendant's Motion to Orally Reargue His Motion for Judgment of Acquittal Notwithstanding Jury Verdict of Guilty, filed. |
| 4/5 | Court Reporter's Transcripts of Proceedings held on Jan. 28, 1976 filed in Hartford. (Collard, R.) |
| 4/5 | Response to Defendant's Motion to Re-Argue Request for Judgment of Acquittal, filed. |
| 4/5 | Over to 4/8/76. (Blumenfeld, J.) |
| 4/8 | Endorsement entered and filed on Defendant's Motion to Orally Reargue his Motion for Judgment of Acquittal Notwithstanding Jury Verdict of Guilt: "Motion to reargue granted; reargument heard; original denial of motion for judgment of acquittal adhered to. 4-8-76." (Blumenfeld, J.) M. 4-9-76. Copies sent to Counsel of Record. |
| 4/8 | DISPOSITION: ct. 5 - ten days imprisonment. / execution suspended for Oral argument re: Motion to re-argue Judgment of Acquittal permitted by Court. Court re-affirmed its ruling of March 36, 1976. (Blumenfeld, J.) |
| 4/9 | Judgment and Commitment Order, filed. (Blumenfeld, J.) M. 4-9-76 Two attested copies handed US Marshal and one attested copy handed US Probation Officer in Hartford. |
| 4/13 | Court Reporter's transcript of proceedings held on April 8, 1976, filed in Hartford. (Collard, R.) |
| 4/14 | Notice of Intention to Appeal, filed |
| 4/15 | Certified copy of Notice of Appeal and docket entries sent to USCA. |

D. C. 100 Criminal Continuation Sheet

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

ANDREW A. PUCCI

CRIMINAL NO. 175/00

INDICTMENT

The Grand Jury charges:

COUNT ONE

From on or about May 4, 1972, until on or about September 29, 1972, in the District of Connecticut, and elsewhere, ANDREW A. PUCCI, the defendant herein, David Guillette, Robert Joost, William Marrapese, Nicholas Zinni, and John Housand did combine, conspire, confederate and agree together and with each other and with unknown others to injure, oppress, threaten and intimidate one Daniel LaPolla, a citizen of the United States of America, in the free exercise and enjoyment of a right and privilege secured to him having exercised said right and privilege, to wit, the right and privilege to give information to the proper authorities concerning violations of the gun control laws of the United States, and the right and privilege to be a witness in a judicial proceeding in the United States District Court for the District of Connecticut, to wit, the case of United States v. William Marrapese, Nicholas Zinni, Robert Joost, and David Guillette, Criminal No. H-264 and it is further alleged that this combination and conspiracy resulted in the death of Daniel LaPolla.

All in violation of Section 241, Title 18, United States Code.

COUNT TWO

1. On or about December 20, 1972 in the District of Connecticut, William Marrapese, who was a defendant in the criminal case of United States v. William Marrapese et. al., Criminal No. H-264 took the witness stand on his own behalf and duly took an oath requiring him to testify

truly to any material matters about which he was questioned relating to the aforementioned criminal case.

2. From on or about December 18, 1972 and continuing thereafter up to and including December 21, 1972, in the District of Connecticut, ANDREW A. BUCCI, the defendant herein, an attorney from Providence, Rhode Island, did wilfully suborn, command, instigate, counsel, induce, procure, aid, and abet, William Marrapese, his client, to take an oath on December 20, 1972 and state that he, Marrapese, would testify truthfully to material matters relative to the criminal case, more specifically with respect to his guilt or innocence involving the interstate transportation, on or about November 21, 1971, of thirty, M-16 machine guns*stolen from the Westerly, Rhode Island National Guard Armory, when in truth and in fact, and contrary to such oath, William Marrapese testified falsely to material matter which neither ANDREW A. BUCCI nor the said William Marrapese believed to be true, said testimony by William Marrapese constituting a false declaration in violation of Section 1623 of Title 18, United States Code.

3. On the 20th day of December, 1972, the said William Marrapese became sworn as a witness as a result of which it became at all times mentioned herein a material matter in the aforementioned proceedings whether William Marrapese, together with Nicholas Zinni, Robert Joost and David Guillette, received and transported thirty, M-16 machine guns from Westerly, Rhode Island to Oneco, Connecticut on or after November 21, 1971. It was material to determine where the said weapons were stored in Oneco, Connecticut and what conversations either William Marrapese, David Guillette, Robert Joost, or Nicholas Zinni had with Daniel LaPolla concerning these M-16 machine guns. It was also a material matter to determine when William Marrapese first conversed with Daniel LaPolla concerning the aforementioned M-16 machine guns and where and under what circumstances these conversations occurred. It was further a material matter to determine the complete and truthful circumstances surrounding a conversation

BEST COPY AVAILABLE

which occurred on March 31, 1972, between William Marrapese and Daniel LaPolla, among others, at American Universal Gold Buyers, Inc., a business operated by William Marrapese at Reservoir Avenue in Cranston, Rhode Island. In this regard, in which William Marrapese and Daniel LaPolla discussed the stolen M-16 machine guns, it was a material matter to determine what agreement relating to these weapons existed between LaPolla and Marrapese prior to March 31, 1972.

4. The said William Marrapese, in consequence of said wilful subornation, command, inducement, assistance and procurement of ANDREW A. BUCCI, being under oath as aforesaid, did falsely and knowingly and contrary to said oath, testify in substance and to the following effect:

"DIRECT EXAMINATION BY MR. BUCCI

...

Q. Well, Mr. Marrapese, you have talked to Mr. LaPolla about ten days to two weeks prior to March 31, 1972, about the thirty weapons; is that correct?

A. Thirty rifles.

Q. Now, prior to before ten days or two weeks before March 31, 1972 have you ever talked to him about it before that?

A. No.....

Q. All right. So that's the first time you had ever talked to Daniel LaPolla with regard to a group of weapons, thirty in number, would be in March of 1972, is that correct?

A. Correct."

5. Said testimony by William Marrapese was false and contrary to the oath taken by William Marrapese, as ANDREW A. BUCCI then and there well knew and believed and had induced, procured, commanded, and in that William Marrapese talked with Daniel LaPolla about the stolen M-16 machine guns on or about November 21, 1971 in Oneco, Connecticut at LaPolla's

residence and that this conversation resulted in an agreement between LaPolla, Marrapese, Nicholas Zinni, David Guillotte, and Robert Joust to store twenty-nine of the thirty stolen M-16 machine guns in Groce, Connecticut.

All in violation of Section 1623 and Section 2, Title 18, United States Code.

COUNT THREE

1. The grand jury re-alleges each and every representation made in paragraphs 1, 2 and 3 of Count Two.

2. The said William Marrapese, in consequence of said subornation, command, inducement, assistance and procurement of ANDREW A. BUCCI, being under oath as aforesaid, did falsely and knowingly, and contrary to said oath, testify in substance and to the following effect:

Q. (by Mr. Bucci) Mr. Marrapese, on November 21, 1971

can you tell us if you ever had any dealings with the transportation of thirty rifles from the State of Rhode Island to the State of Connecticut, and more specifically to do with Daniel LaPolla.

A. No, I did not.

Q. Now, with regard to thirty weapons, as related to

Daniel LaPolla, have you ever had any connection with those weapons, that group of thirty weapons, being thrown into a pond or a quarry?

A. No, I did not.

Q. Did you at any time prior to your conversation, two or three conversations in March of 1972, have any connection with thirty rifles in relation to Daniel LaPolla.

A. No, I did not.

3. Said testimony by William Marrapese was false and contrary to the oath taken by William Marrapese, as ANDREW A. BUCCI then and there

well knew and believed and had induced, commanded, procured and assisted, in that William Marrapese along with David Guillette, Robert Joost and Nicholas Zinni, transported and assisted in the transportation of thirty stolen, M-16 machine guns from Westerly, Rhode Island to the residence of Daniel LaPolla, in Oneco, Connecticut on or after November 21, 1971; said testimony being further false in that after said transportation William Marrapese retained one of the thirty M-16 rifles, the rest having been left in Oneco, to assist in an effort to obtain bolts that would fit into the M-16 machine guns and thus make them operatable, and that William Marrapese made efforts after November 21, 1971, though unsuccessful, to obtain said bolts. *spelling*

All in violation of Section 1623, and Section 2 of Title 18, United States Code.

COUNT FOUR

1. The grand jury re-alleges each and every representation made in paragraphs 1, 2 and 3 of Count Two.

2. The said William Marrapese, in consequence of said wilful subornation, command, and assistance, procurement of ANDREW A. BUCCI, being under oath as aforesaid, did falsely and knowingly, and contrary to said oath testify in substance and to the following effect:

Q. (By Mr. Bucci) When was the first time that you actually saw the residence of one Daniel LaPolla?

A. Either late June or early July.

Q. This year?

A. Yes, 1972.

Q. And in what regard, Mr. Marrapese? Was it with regard to an investigation of the charge brought against you?

A. Yes, it was.

3. Said testimony was by William Marrapese false and contrary to the oath taken by William Marrapese, as ANDREW A. BUCCI then and there well knew and believed and had induced, commanded, procured and assisted, in that William Marrapese was at the residence of Daniel LaFolla on or about November 21, 1971, in the company of LaFolla, David Guillette, Robert Joost and Nicholas Zinni for the purpose of storing stolen M-16 machine guns.

All in violation of Section 1623 and 2 of Title 18, United States Code.

COUNT FIVE

1. From on or about December 18, 1972 and continuing thereafter up to and including December 21, 1972, in the District of Connecticut, ANDREW A. BUCCI, the defendant herein, and William Marrapese did combine, conspire, confederate, and agree with each other to commit offenses against the United States, to wit, false declaration under oath by William Marrapese in federal District Court, District of Connecticut, in Hartford, Connecticut on December 20, 1972 in the case of United States v. William Marrapese, et. al., Criminal No. H-264.

2. It was a part of the said conspiracy that William Marrapese would take the witness stand on his own behalf on December 20, 1972 in United States v. William Marrapese, et. al., Criminal No. H-264, and after being first sworn to testify truthfully, would knowingly and wilfully make false material declarations relating to his alleged lack of involvement in the transportation, possession, concealment and storage of stolen M-16 machine guns from Westerly, Rhode Island to Oneco, Connecticut on or about November 21, 1971.

3. It was further a part of said conspiracy that ANDREW A. BUCCI, who was the attorney for William Marrapese in Criminal No. H-264 and who knew that William Marrapese had in fact assisted in the transportation of stolen M-16 machine guns on or about November 21, 1971 from West rly,

BEST COPY AVAILABLE

Rhode Island to Oneco, Connecticut, suggested on or about December 19, 1972 to William Marrapese that he, Marrapese, admit under oath that he discussed stolen M-16 machine guns with one Daniel LaPolla on March 3, 1972 at American Universal Gold Buyers, Inc., a business operated by William Marrapese on Reservoir Avenue in Cranston, Rhode Island. The defendant, ANDREW A. BUCCI, also suggested that Marrapese falsely testify that the first discussion he had with Daniel LaPolla concerning these stolen M-16 machine guns occurred in mid-March, 1972. The purpose of these statements, as suggested by the defendant, ANDREW A. BUCCI, and agreed to by William Marrapese, was to account for and overcome a recorded conversation introduced into evidence by the United States in its case-in-chief in Criminal No. H-264 in which LaPolla and Marrapese discussed the M-16 machine guns and agreed to sell each weapon for \$100 to an unknown buyer.

4. It was further a part of said conspiracy that ANDREW A. BUCCI suggested to William Marrapese to testify falsely that he, Marrapese, had no involvement whatsoever with the stolen M-16 machine guns prior to mid-March, 1972 and did not, at any time, possess, conceal or transport the stolen M-16 machine guns from the State of Rhode Island to Oneco, Connecticut.

OVERT ACTS

Pursuant to the conspiratorial agreement set out in paragraphs 1, 2, 3, and 4 above, William Marrapese took the witness stand on December 20, 1972 and falsely testified in response to questions from his attorney, ANDREW A. BUCCI, that:

(a) The first time he had ever talked to Daniel LaPolla about stolen M-16 machine guns was in March, 1972.

(b) He had no involvement with or connection to the transportation of thirty M-16 machine guns from Rhode Island to Connecticut relating to Daniel LaPolla.

✓ (c) The first time he saw the residence of Daniel
LaFolla was in June or July of 1972.

All in violation of Section 371, Title 18, United States Code.

A TRUE BILL.

Peter C. Dorsey
PETER C. DORSEY
UNITED STATES ATTORNEY

James Ferguson
FOREMAN

Paul E. Coffey
PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

MAR 25 1 30 PM '75

U.S. DISTRICT COURT
DISTRICT OF CONNECTICUTUNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
v. : CRIMINAL NO. H-75-39
ANDREW A. BUCCI :

RULING ON POST-TRIAL MOTIONS

This case is before me on the defendant's motions for a judgment of acquittal and a new trial, following his conviction on four counts by a jury on January 30, 1976.^{1/} Defendant Bucci, an attorney, was found guilty of aiding and abetting his then-client, William Marrapese, in giving false testimony at Marrapese's own criminal trial. Bucci was also convicted of conspiring, with Marrapese, to have Marrapese give false testimony at that trial.^{2/}

The defendant's motion for a judgment of acquittal is based on a small, but vital, omission in the government's proof at trial--its failure to establish that William

^{1/}

Mr. Bucci was indicted on five counts on March 21, 1975. Count one, charging him with participating in a conspiracy to kill a federal witness in order to prevent him from testifying, was severed. He was acquitted of this charge on September 3, 1975, following a jury trial before the Honorable Jon O. Newman.

^{2/}

Counts two, three, and four were brought under Sections 2 and 1623 of Title 18 of the United States Code. Count five alleged a conspiracy to violate § 1623, in violation of 18 U.S.C. § 371.

Marrapese's statements at his own trial were made under oath.^{3/} The defendant is correct; the government did neglect to introduce any evidence specifically establishing this element of the offense.^{4/}

In a valiant post facto effort to salvage the conviction, the government contends that enough evidence concerning the oath requirement was presented for the jury to infer that Marrapese testified under oath. Even viewing the evidence with the favorable inferences to which the government is entitled, United States v. McCarthy, 473 F.2d 300 (2d Cir. 1972), I disagree. In Smith v. United States, 363 F.2d 143 (5th Cir. 1966), the Court of Appeals reversed a conviction because the only evidence concerning the oath requirement was the transcript of the habeas corpus proceeding at which the defendant made the statements underlying the perjury charge. The court held that "the court reporter's usual prefatory statement, 'Petitioner, Joe Smith, having been duly

^{3/} These statements were the basis of Marrapese's false statements offense, the aiding and abetting of which was charged in counts two, three, and four against Bucci. The motion for judgment of acquittal does not, on its face, apply to count five. ✓✓✓

^{4/} Judge Smith's opinion in United States v. Stone, 429 F.2d 138 (2d Cir. 1970), points out that one of "[t]he essential elements of a violation of 18 U.S.C. § 1621 [is] the taking of an oath . . . to testify truly" Id., at 140. The false statements statute, 18 U.S.C. § 1623, was enacted by Congress to circumvent the two-witness requirement present under the perjury statute, § 1621. However, the taking of an oath remains an element of the false statement offense. Section 1623 provides, in pertinent part, that: "Whoever under oath in any proceeding . . . shall be fined . . . or imprisoned"

sworn, testified" was not enough. Here we lack even such hearsay. Neither the clerk of court nor the official court stenographer were called to testify, and the transcript of Marrapese's testimony neither was offered nor admitted. The only evidence adduced was Marrapese's conclusory admission that he had perjured himself at the earlier trial.^{5/} But Marrapese's opinion that his statements at the earlier trial constituted perjury, a legal conclusion, is worthless. This statement is simply not enough to support the required inference.

The government's other contentions are equally unpersuasive. The mere use of the word "testimony" in questions concerning Marrapese's statements at the earlier trial cannot remedy this deficiency of proof, despite its definition as "[e]vidence given by a competent witness, under oath or affirmation"^{6/} Alternatively, the government asks the court to uphold the conviction because of "the strong presumption of regularity" with respect to procedures surrounding Marrapese's testimony "before another member of this

^{5/}

The direct examination was as follows:

"Q Did you perjure yourself with respect to those answers?

"A Yes, I did."

Transcript, p. 7 at lines 17-19.

^{6/}

Black's Law Dictionary 1646 (4th ed. 1951).

court during the regular course of a criminal trial," citing United States v. Mathern, 329 F. Supp. 536, 538 (E.D. Pa. 1971).

The government claims that the decision in Mathern resolves both these claims in its favor. However, the Mathern case is distinguishable from the one before me in several important respects. First, in Mathern there was a stipulation between the prosecutor and defense counsel, with respect to the accuracy and authenticity of the official transcript of the defendant's prior testimony. That stipulation covered the court stenographer's notation that the defendant's testimony had been given under oath. Although the government did not introduce that transcript into evidence, at the request of defense counsel, the jury was informed (in general terms) of this stipulation. Furthermore, the prosecutor at the prior trial testified in Mathern that the defendant had testified "under oath" at the earlier trial. These distinctions may seem petty, but they must be made else the government shirk its burden of proving every element of the offense, beyond a reasonable doubt.^{7/}

^{7/} The government also cites Vuckson v. United States, 354 F.2d 918 (9th Cir. 1966), in support of its claims. However, that case is also distinguishable. There the counsel stipulated to the accuracy and authenticity of the grand jury transcript upon which the perjury charge was based, and the transcript itself was actually introduced into evidence. In addition, the issue was first raised on appeal and the defendant himself admitted on cross-examination that he had been placed under oath prior to testifying before the grand jury. Id., at 921-22.

Thus, all that remains for consideration of the defendant's motion for a new trial is his conviction on count five, charging that he participated in a conspiracy with William Marrapese. Mr. Bucci's claim boils down to an assertion that Marrapese was an inherently incredible witness. However, the credibility of witnesses is a matter for the jury, United States v. Pacelli, 521 F.2d 135, 140 (2d Cir. 1975), cert. denied, 44 U.S.L.W. 3471 (U.S. Feb. 24, 1976) (No. 75-751), and they have made their assessment of Mr. Marrapese. The jury was instructed in no uncertain terms regarding the scrutiny to which they should subject Marrapese's testimony. It is not for the court to set that evaluation aside. From the testimony presented by the government, it would be possible to conclude that it was defendant Bucci's idea to put his client, Marrapese, on the witness stand at the earlier trial. Further, that Bucci developed the plan to "explain" the March 31, 1972 tape by having Marrapese admit to attempting to dispose of the M-16 rifles for Daniel LaPolla, and to meeting with LaPolla on several occasions to accomplish that transaction. Finally, Marrapese testified that he and Bucci rehearsed the false testimony the evening before he took the stand, in their hotel room.^{8/} This testimony, even though that of an

^{8/}

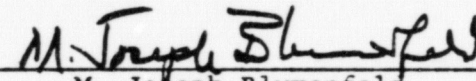
Transcript, pp. 51-53; pp. 56-60; p. 62 at lines 9-14.

uncorroborated co-conspirator,^{9/} is sufficient to uphold the conviction for conspiring to have Marrapese testify falsely at the earlier trial. Moreover, the jury could have drawn adverse inferences from the defendant's failure to produce his law partner whom Marrapese had testified was present during the rehearsal. Cf. 481 F.2d at 881.

Accordingly, a judgment of acquittal may enter on counts two, three, and four; the defendant's motion for a new trial as to count five is denied. It is

SO ORDERED.

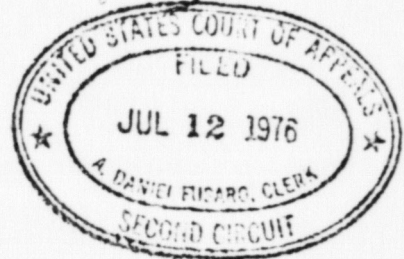
Dated at Hartford, Connecticut, this 26th day of March, 1976.


M. Joseph Blumenfeld
United States District Judge

^{9/}

See, e.g., United States v. Bernstein, No. 74-2328 (2d Cir. Mar. 4, 1976) Slip op. 6631, 6656; United States v. Messina, 481 F.2d 878, 881 (2d Cir. 1973), cert. denied, 414 U.S. 1145 (1974); United States v. Ferrara, 458 F.2d 869, 871 (2d Cir.), cert. denied, 408 U.S. 931 (1972).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



UNITED STATES OF AMERICA
Plaintiff, Appellee,

v.

ANDREW A. BUCCI
Defendant, Appellant

No. 76-1200

AFFIDAVIT OF SERVICE

I, Andrew A. Bucci, first being duly sworn on oath, depose and say, that I have mailed 2 copies of the Brief for Defendant-Appellant (From Judgment and Sentence) No. 76-1200 and 2 copies of the Appendix No. 76-1200 to Paul Coffey, Federal Building, 450 Main Street, Hartford, Connecticut this 12th day of July, 1976.

Andrew A. Bucci
Andrew A. Bucci

Subscribed and sworn to before me this 12th day of

July, 1976.

Robert A. Sherman
Notary Public